

SWRCB Staff Collaborative Process Participation Statement

The State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards are the principal state agencies responsible for administering the state's water quality control program. (Water Code sections 13000-14958.) The SWRCB is also the state agency authorized to grant, waive, or deny water quality certification as provided for under section 401 of the federal Clean Water Act. (Water Code section 13160; see generally 33 U.S.C. section 1341.) The SWRCB must grant or waive water quality certification before a license to operate a hydropower project may be issued by the Federal Energy Regulatory Commission (FERC). In addition, the SWRCB is the state agency responsible for administering surface water rights throughout the state. (Water Code sections 1000-5976.)

SWRCB staff agree to participate in the development of information regarding FERC Project 184 that may lead to a settlement among the interested parties. Although SWRCB staff are willing to participate in the collaborative effort in good faith, SWRCB staff cannot guarantee that a settlement agreement with El Dorado Irrigation District (EID) and the other stakeholders will be reached.

The SWRCB acts in an adjudicative capacity when it processes a request for water quality certification. The SWRCB must be impartial and afford all parties before it a fair hearing. The SWRCB's obligation to be a neutral decision-maker may limit its ability to compromise in the course of negotiating an agreement with EID and the other stakeholders.

In addition, the SWRCB has an independent statutory duty under the Clean Water Act and the applicable regional water quality control plan to ensure that the operation of Project 184 will not adversely affect water quality or the beneficial uses of the affected lakes and stream reaches within the South Fork American River Basin and the Tahoe Basin.